



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Ms. Leah Clark
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR98-1335

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115852.

The City of Waco (the "city") received three requests for all information concerning a tree accident at Bledsoe-Miller Park. You state that fourteen categories of information are responsive to the requests. You indicate that this office has previously ruled on the disclosure of categories one through seven, Exhibits D through J, and that you will rely on this decision. Open Records Letter Ruling No. 97-2150 (1997). We agree that you may rely on our previous decision for categories one through seven of the requested information. Gov't Code § 552.301. You also state that you will release categories ten through fourteen, Exhibits M through Q, to the requestor. This information includes full and final release agreements, trust agreements, full and final settlement checks, claims adjuster's final invoices, and notice of claim forms. You now seek to withhold the claims adjuster's reports, and settlement offer letters. You have submitted this information as Exhibits K and L, categories eight and nine of the responsive information. You indicate that this information was generated after Open Records Letter No. 97-2150 (1997) was issued; therefore, you seek a decision on the disclosure of the information. You claim that Exhibits K and L may be withheld under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

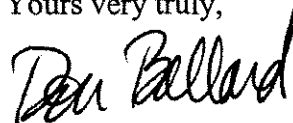
The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

We have previously found that the city reasonably anticipates litigation because of the tree accident at Bledsoe-Miller Park. Open Records Letter Ruling No. 97-2150 (1997). You previously demonstrated that the city has received several notices of claim that complied with the notice provisions of the Texas Tort Claims Act and the city's charter. *Id.* You explain that the city "has received thirty-one (31) claims in connection with the incident at Bledsoe-Miller Park. Twenty-one (21) claims have settled, while ten (10) claims remain pending." We find that Exhibits K and L relate to reasonably anticipated litigation, and may be withheld under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we make a determination under section 552.103, we do not address your additional arguments against disclosure. We note, however, that some of the requested information may be confidential by law and must not be released. If you receive a subsequent request for the information at a time when litigation is no longer reasonably anticipated or pending, you should re-assert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense). We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

Ref: ID# 115852

Enclosures: Submitted documents

cc: Ms. Julie J. Everitt
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(w/ Open Records Letter No. 97-2150 (1997); w/o enclosures)

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